IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

WA.No. 2832 of 2007

AGAINST THE JUDGEMENT IN WPC.9782/2007 Dated 22/03/2007

APPELLANTS/PETITIONERS:

1. CHINNAMMA SIMON,
W/O.LATE MATHAI SIMON,
MELEKIZHAKKETHIL MULLASSERIL HOUSE,
NARANGANAM POST AND VILLAGE,
KOZHENCHERRY TALUK,
PATHANAMTHITTA DIST

2. SURESH SIMON,
S/O.LATE MATHAI SIMON,
MELEKIZHAKKETHIL MULLASSERIL HOUSE,
NARANGANAM POST AND VILLAGE,
KOZHENCHERRY TALUK,
PATHANAMTHITTA DIST

BY ADV. SRI.LIJU.V.STEPHEN

RESPONDENTS/RESPONDENTS:

1. ADDITIONAL SALES-TAX OFFICER,
CHENGANNUR.

2. THE APPELLATE ASSISTANT COMMISSIONER.
DEPARTMENT OF COMMERCIAL TAXES,ALAPPUZHA.

3. THE DISTRICT COLLECTOR,
PATHANAMTHITTA.

4. THE TAHSILDAR (R.R),
KOZHENCHERRY TALUK AT PATHANAMTHITTA,
PATHANAMTHITTA P.O.

5. THE VILLAGE OFFICER,
NARANGANAM VILLAGE OFFICE,
NARANGANAM P.O,
KOZHENCHERY TALUK.

BY SR. GOVERNMENT PLEADER SRI. MUHAMMED RAFIQ.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 04/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, CJ. & K. M. JOSEPH, J.

W.A. NO. 2832 OF 2007

Dated this the 4th December, 2007

JUDGMENT

H.L. DATTU, CJ.

Questioning the correctness or otherwise of the Order passed by the learned Single Judge in W.P.(C). No.9782/07 dated 22.3.2007, the petitioners are before us in this Writ Appeal.

2. The learned Single Judge, by the impugned order, has only directed the petitioners to execute the Decree said to have been passed by the Munsiff Court, Pathanamthitta in OS No.92/03.

3. Petitioners were before this Court in O.P. No.9052/03. In the said Writ Petition, the primary question was the revenue recovery notices issued by the respondent Authorities (Exts.P2 and P2(a)), for realisation of the sales tax due under the Kerala General Sales Tax Act. The learned Single Judge by the Order dated 11.8.2005 had disposed of the Writ Petition and in that, had stated as under:

> *" Petitioners are challenging the recovery proceedings initiated for recovery of arrears of sales tax due from the husband of the 1st petitioner. Government Pleader on instructions submitted that the late husband of the 1st petitioner during his life time conducted business which led to assessments, and appeals were dismissed. Thereafter, it appears that he had filed civil suits, result of which is unknown. In the circumstances, petitioners are not entitled to challenge the recovery proceedings for recovery of arrears of sales tax from the estate of the deceased, whether it is devolved on them or not. Recovery against defaulter's property is permissible even after his death by virtue of Section 20 of the KGST Act. However, following the amnesty scheme of 2004 not availed by petitioners, petitioners are given time till 15.11.2005 to clear the arrears with 40% interest and if payment is made 60% interest will stand waived. If liability*

is not settled, recovery proceedings will be continued against the property of the deceased whether it is devolved on the petitioners or transferred to any one person. However, the petitioners and other claimants can file claim petition under Section 46 of the Revenue Recovery Act which the Recovery Authority will dispose of with reference to statutory provisions and after hearing the claimants. The Original Petition is disposed of as above. No costs."

4. Before the trial court, for reasons best known, the appellant/petitioners did not bring to the notice of the court the Order passed in O.P. No.9052/03. That may be the reason for the trial court in granting the relief sought for by the plaintiffs in the Suit.

5. In the present Writ Petition filed by the petitioners, the question involved is the very same revenue recovery notices which were the subject matter in O.P. No.9052/03. In our view, for the very same cause of action, the writ petitioners could not have approached this Court by filing a separate Writ Petition. The Writ Petition so filed by the petitioners is hit by the principles of res judicata. In that view of the matter, while rejecting the Writ Appeal, we confirm the orders passed by the learned Single Judge, though on a different footing.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE

K.M. JOSEPH,
JUDGE

kbk.